of view on this point is manifested in the prevailing and dissenting opinions in Illinois. It seems to be conceded by the dissenting judges that the district attorney had incorrectly stated to the jury that it was the duty of the defendant to call his codefendants. In Wigmore on Evidence (sec. 288) occurs the following language:

"It is commonly said that no inference is allowable where the person in question is equally available to both parties; particularly where he is actually in court; though there seems to be no disposition to accept such a limitation absolutely or to enforce it strictly. Yet the more logical view is that the failure to produce is open to an inference against both parties, the particular strength of the inference against either depending on the circumstances. To prohibit the inference entirely is to reduce to an arbitrary rule of uniformity that which really depends on the varying significance of facts which cannot be so measured."

The majority of the Illinois court were of opinion not only that there had been error, but that the error was sufficiently serious for a reversal. Three members of the court entertained the view that although the course of the district attorney was open to criticism, the error, if any, should be disregarded in view of the general cogency and strength of the evidence upon which the conviction was found.

Interstate Commerce—Newspaper Advertising.—In Post Printing & Publishing Co. *v.* Brewster, 246 Fed. 321 (D. C.), attention was called to Laws of Kansas, 1917 (chap. 166, sec. 1), which declares it shall be unlawful for any person, company, or corporation to barter, sell, or give away any cigarettes or cigarette papers, and to section 2 declaring that it shall be unlawful for any person, company, or corporation to advertise cigarettes or cigarette papers. It appeared that plaintiff, a Missouri corporation, engaged in the business of printing a newspaper in the State of Missouri, sold and distributed its newspaper throughout the State of Kansas, delivering the same by means of the postal service, express companies and other carriers. The sale of cigarettes was authorized in the State of Missouri, and Congress has placed no restrictions on interstate commerce in cigarettes. It was held that the statute, in so far as it was levied against the advertisement of cigarettes in a newspaper distributed in interstate commerce, was unconstitutional and its enforcement by State officials may be enjoined. The following is from the opinion:

"The sale of cigarettes in the State of Missouri, where the newspapers of plaintiff are published, is a lawful business, and the transmission by plaintiff of the intelligence where and on what terms cigarettes may be purchased by its subscribers, by way of advertisements inserted in such newspaper, is perfectly legitimate and proper. Further, it must be regarded as settled the sale of cigarettes in a

foreign State to a citizen of this State, and their carriage from said foreign State into this State and here delivered in original packages in consummation of such sale made in a foreign State, is legitimate interstate commerce, which is beyond the power of the legislature of this State to prohibit or unduly restrict or burden (Austin *v.* Tenn., 179 U. S. 343, 21 Sup. Ct. 132, 45 L. Ed. 224; State *v.* Lowry, 166 Ind. 372, 77 N. E. 728, 4 L. R. A., N. S., 528, 9 Ann. Cas. 350). In other words, while the business of bartering, selling, or in any other manner disposing of cigarettes in this State, or the business of advertising in any manner by any one within this State of the business of selling or disposing of cigarettes, is by the act in question properly prohibited, yet by reason of the exclusive control of Congress over interstate commerce it must, I think, be held, as the conduct of interstate commerce in cigarettes may not by a State be prohibited or unreasonably burdened, it follows, of necessity, the business of advertising such interstate commerce business, which advertising itself not only is a form of interstate commerce, but further adheres in the very conduct of the interstate cigarette business itself, is also beyond the power of the State to prohibit or make criminal and punish, and this for the reason it cannot be thought possible to make the advertisement of a lawful business unlawful and punishable as a crime (Lying *v.* Michigan, 135 U. S. 161, 10 Sup. Ct. 725, 34 L. Ed. 150; Crutcher *v.* Kentucky, 141 U. S. 47, 11 Sup. Ct. 851, 35 L. Ed. 649; In re Rahrer, 140 U. S. 545, 11 Sup. Ct. 865, 35 L. Ed. 572).

"In State *v.* Bass Pub. Co. (104 Me. 288, 71 Atl. 894, 20 L. R. A., N. S., 495) the Supreme Court of Maine held:

" 'The defendants further urge that newspapers and magazines published in other states and containing advertisements of intoxicating liquors for sale come into this state by mail and otherwise in large quantities and yet cannot be interfered with by the state authorities. That may be, but it does not follow that the state may not prevent such advertisements being printed in newspapers published in this state. If this state cannot wholly prevent the mischief of such advertisements by excluding from the state all newspapers containing them wherever published, it may yet prevent such increase and spread of the mischief as would result from such advertisements being printed in newspapers published within the state. It may to that extent control the conduct of printers and publishers within its own territory. Such we understand to be the logical result of the decision and reasoning in the Delamater case by the court of last resort upon such questions.'

"This case, it would seem, draws the true distinction between a publication containing the prohibited advertisements printed in this state and without. However, it is earnestly insisted by defendants the case of Delamater *v.* South Dakota (205 U. S. 93, 27 Sup. Ct. 447,

51 L. Ed. 724, 10 Ann. Cas. 733) is controlling here. I am of a contrary opinion. A study of that case will disclose the fact it is predicated upon the principle that intoxicating liquors, by reason of their very inherent nature and the results which flow from their use, had theretofore by the Congress in the Wilson Act (26 Stat. 313, Comp. St. 1916, sec. 8738) been withdrawn from that protection against state interference universally accorded to interstate commerce in other commodities, whereas such discrimination against cigarettes or tobacco in any form carried in interstate commerce has not as yet been made by the Congress. This fact, to my mind, distinguishes the Delamater case and the case of State ex rel. Black *v.* Delaye (193 Ala. 500, 68 South. 993, L. R. A., 1915E, 640) from the present case."

Principal and Surety—Discharge of Surety—Strictissimi Juris.—In Matchett *v.* Winona Assembly & Summer School Ass'n, 113 N. E. 1, in the Supreme Court of Indiana, it was held that where, on December 31, 1909, a creditor accepted payment of interest on an overdue note in excess of the amount due, and indorsed on the note interest paid to December 5, 1910, payment of the original debt was thereby extended and the sureties released.

It was laid down that the rule strictissimi juris applied to contracts of suretyship in favor of volunteer individual sureties, but not in favor of corporate surety companies, should be applied for the benefit of stockholders of a corporation not conducted for profit, although the rule might not apply in the case of corporations conducted for profit. The court said in part:

"It is stated in the tenth finding that at the time the note in suit was extended John F. Beyer, Christian C. Beyer and J. Edward Beyer were each the owner of $100 of the capital stock of the Winona Assembly & Summer School Association, and that John F. Beyer was at that time a member of the board of directors of that corporation. It further appears from this finding that the money borrowed on the note was used for the benefit of the corporation, and that there was no change in the financial responsibility of the principal maker of the note between December 31, 1909, and January 5, 1910. On behalf of appellants it is claimed that the facts thus stated take the sureties in this case out of the class in whose favor the rule of strictissimi juris is applied and place them in a class of sureties which cannot invoke that rule in their favor for the reason that they have a beneficial interest in the contract upon which they are sureties. The trend of modern authority is to distinguish between contracts of suretyship entered into by individuals through friendship or other similar motives and like contracts made by corporations organized for the express purpose of acting as surety for a consideration. The rule of strictissimi juris is applied to the former,